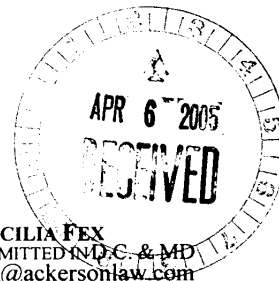




ACKERSON KAUFFMAN FEX

ATTORNEYS, PC

WASHINGTON, DC • PALO ALTO, CA



CECILIA FEX
ADMITTED IN D.C. & MD
fex@ackersonlaw.com

April 6, 2005

Hand Delivered

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

ENTERED
Office of Proceedings

APR - 6 2005

Part of
Public Record

Re: Docket No. AB-6 (Sub-No. 335X) - 213699
Burlington Northern Railroad Company – Abandonment Exemption – Between
Klickitat and Goldendale, WA

and

Docket No. AB-6 (Sub-No. 346X) - 213700
Burlington Northern Railroad Company – Abandonment Exemption – in Klickitat
County, WA

Dear Secretary Williams:

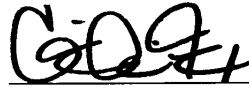
On behalf of Tracy and Lorraine Zoller, William Giersch, David and Kristen Mattson, and Allen Tooke ("Petitioners"), by counsel, attached for filing in the above-captioned proceedings are an original and eleven copies of **Petitioners' Opposition to Trail Owners' Motion to Expedite the Disposition of the Petition to Re-Open AB-6 Sub. Nos. 335X & 346X.**

Please file appropriately and, in addition, time-stamp one copy of the petition to be returned in the self-stamped, addressed envelope.

Thank you for your consideration in this matter. If you have any questions or concerns, I can be reached at the below-referenced numbers.

The Honorable Vernon A. Williams
April 6, 2005
Page 2

Sincerely,

A handwritten signature in black ink, appearing to read 'Cecilia Fex', written over a horizontal line.

Cecilia Fex
Counsel for Petitioners

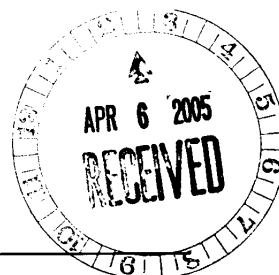
Enclosures

cc: Sidney L. Strickland, Jr., Esquire
Charles H. Montange, Esquire



ACKERSON KAUFFMAN FEX
ATTORNEYS, PC

BEFORE THE
SURFACE TRANSPORTATION BOARD



213700
Docket No. AB-6, Sub-No. 346X & Sub-No. 335X

-213699

BURLINGTON NORTHERN RAILROAD COMPANY – ABANDONMENT EXEMPTION –
IN KLINKITAT COUNTY, WA (Sub-No. 346X);

and,

BURLINGTON NORTHERN RAILROAD COMPANY – ABANDONMENT EXEMPTION –
BETWEEN KLINKITAT AND GOLDENDALE, WA (Sub-No. 335X);

OPPOSITION TO TRAIL OWNERS' MOTION TO EXPEDITE THE
DISPOSITION OF THE PETITION TO RE-OPEN AB-6 SUB. NOS. 335X & 346X
FILED BY ZOLLER, ET AL.

ENTERED
Office of Proceedings

APR - 6 2005

Part of
Public Record

Cecilia Fex
ACKERSON KAUFFMAN FEX, PC
1250 H Street, NW, Suite 850
Washington, DC 20005
Telephone: (202) 833-8833
Facsimile: (202) 833-8831
fex@ackersonlaw.com

Counsel for Petitioners

Dated: April 06, 2005

By motion filed March 30, 2005 Washington State Parks and Recreation Commission, Rails to Trails Conservancy, and Klickitat Trail Conservancy (“Trail Owners”) requested that the Board expedite the disposition of the petition filed by Petitioners Tracy and Lorraine Zoller, William Giersch, David and Kristen Mattson, and Allen Tooke (“Petitioners”) in the above-captioned matter. Petitioners hereby oppose that motion and state as follows.

Notwithstanding the Trail Owners’ frequently repeated complaint that the Petitioners’ filings are “frivolous,” Petitioners have filed their request with the Board for the legitimate reason that all evidence that could be found by Petitioners in the public domain pointed to the inescapable conclusion that the original right-of-way footprint at the location of Lyle, and south of Highway 14, had been completely obliterated by the BNSF sales to the Rutledge Hotel and to Creg Colt Land Brokers, Inc. (See Petition, generally.) Based on a careful examination of this evidence, Petitioners therefore concluded that filing the Petition with the Board was appropriate under the law.

As has already been set out in Petitioners’ motion to hold the matter in abeyance, *all* of the purported supporting evidence offered by the Tails Owners and BNSF on the issue of abandonment of the right-of-way south of Highway 14 was new, or to a more limited extent, was simply unavailable in the public domain. Furthermore, the evidence presented by the opposing parties is contradicted by the evidence that was available to Petitioners in preparing their petition. Petitioners therefore suspect that the opposing parties’ evidence will be shown to be inaccurate or otherwise false, and they are asking for a finite amount of additional time in order to be able to provide the proper and complete evidence the Board would need in order to make a fully informed decision on the important issue of this Board’s jurisdiction.

Petitioners respectfully submit that this is especially necessary, given the tentative declaration offered by Ron Nelson in support of the Trail Owners' Opposition and upon which the Trail Owners rely (where Mr. Nelson states, "further research is necessary for a definitive and binding answer as to who owns what south of Highway 14"),^{1/} and given the verified statement offered by Richard A. Batie, Manager Network Development for BNSF, which fails to include supporting documentation in the form of the deeds upon which he relies to argue that BNSF retained a narrow strip of right-of-way.

Accordingly, the opposing parties have relied on arguments that are actually unsupported by their own evidence, putting Petitioners in the position of having to prove a negative – to prove that, indeed, the opposing parties' evidence is lacking because the actual evidence supports and proves opposite conclusions to those alleged by the opposing parties.

In addition, as signaled by Petitioners' motion to hold in abeyance the proceedings on their Petition, there are other important considerations that may be at issue when a trail sponsor – and not even a railroad carrier – attempts to resurrect the Board's jurisdiction through a newly purchased right-of-way segment, as was done by the Trail Owners with respect to the recent Greg Colt Brokers, Inc. easement conveyance to the trail sponsors. (Trail Owners' Opposition to Petition, Ex. B-3.) As should be clear to the Trail Owners, that strategy has opened up an entirely new legal issue or issues which simply were nonexistent at the time Petitioners filed their original petition. Those are legal issues that, likewise, should be addressed by the parties before the Board.

^{1/} It is ironic that the Trail Owners lambast Petitioners for seeking the very proof that their own witness opines is necessary to get to the truth of the matter.

Accordingly, and while the Trail Owners failed to acknowledge the Board's discretion in the matter when arguing that a "reply to a reply is not permitted," Petitioners submit that the importance of the factual and legal issues presented here, most of which are new and all of which determines whether the Board continues to maintain jurisdiction over this severed right-of-way, are of sufficient importance to support a departure from 49 C.F.R. § 1104.13©. *E.g. Potomac Electric Power Company v. CSX Transportation, Inc.*, 2 S.T.B. 290, Docket Nos. 41989 & 41295, decision served May 27, 1997 (found at 1997 WL 274205); *RLTD Railway Corp. – Abandonment Exemption – In Leelanau County, MI*, AB-457X, decision served August 23, 1996 (found at 1996 WL 476653).

For the above-stated reasons, Petitioners oppose the Trail Owners' motion for expedited proceedings.

Respectfully submitted this 6th day of April, 2005,

By: ACKERSON KAUFFMAN FEX, PC



Cecilia Fex

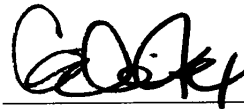
ACKERSON KAUFFMAN FEX, PC
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Washington, DC 20005
Office: (202) 833-8833
Fax: (202) 833-8831
fex@ackersonlaw.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Opposition to Trail Owners' Motion to Expedite the Disposition of the Petition to Re-Open AB-6 Sub. Nos. 335X & 346X was served upon the following by U.S. Mail, First Class, postage prepaid this 6th day of April 2005:

Charles H. Montange
426 NW 162nd St
Seattle, WA 98177

Sidney L. Strickland, Jr.
Burlington Northern Santa Fe Corporation
700 13th Street, NW, Suite 220
Washington, DC 20005-5915

A handwritten signature in black ink, appearing to read 'Cecilia Fex', written over a horizontal line.

Cecilia Fex